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IN THE

Supreme Court of the United States

October Term, 1962

No. [redacted] 30

EDWARD R. FIELDS and NATIONAL STATES RIGHTS PARTY, and ROBERT LYONS,

Appellants,

v.

CITY OF FAIRFIELD, a Municipal Corporation,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Opinions Below

The opinion of the Supreme Court of Alabama is reported at — Ala.—, 143 So. 2d 177 and set out *infra* at pp. 2a-7a. No opinion was written by the Circuit Court of Jefferson County, but its oral opinion rendered at the time of judgment is contained at R. 71-73 and is set out *infra* at pp. 8a-9a.

Jurisdiction

(i) Appellee filed a bill of complaint (R. 2-3) in the Circuit Court of Jefferson County on October 11, 1961, alleging that appellants intended to hold a public meeting without obtaining a permit, in violation of Section 14-53

of the General City Code of Fairfield, and had distributed handbills announcing the meeting in violation of Sections 3-4 and 3-5 of the General City Code. The bill prayed that "a temporary writ of injunction or restraining order be immediately issued by this Court * * * restraining [appellants] from holding said meeting * * * and distributing said handbills," and that the injunction be made permanent after final hearing. The temporary writ (R. 5-6) was issued the same day on appellee's *ex parte* application. The next day, appellants Fields and Lyons were found in criminal contempt of the injunction and sentenced to five days in jail and a $50 fine.

(ii) The judgment of conviction was affirmed and entered by the Alabama Supreme Court on June 14, 1962 (R. 101) and a timely application for rehearing was denied on July 12, 1962 (R. 104). Execution of sentence was stayed pending this appeal (R. 108). Notice of Appeal to the Supreme Court of the United States was filed with the Supreme Court of Alabama on September 10, 1962 (R. 109-111). An amended Notice of Appeal was filed on September 18, 1962 (R. 112-113).

(iii) The jurisdiction of this Court to review by appeal the judgment of the Supreme Court of Alabama is conferred by 28 U. S. C. § 1257(2).

(iv) The cases which sustain the jurisdiction of this Court are *Lovell* v. *Griffin*, 303 U. S. 444; *Jamison* v. *Texas*, 318 U. S. 413; *Thomas* v. *Collins*, 323 U. S. 516; *Staub* v. *Baxley*, 355 U. S. 313.

The Statutes Involved

GENERAL CITY CODE OF FAIRFIELD, ALABAMA

Sec. 3-4. Handbills, etc.—Distribution on streets.

It shall be unlawful for any person to distribute or cause to be distributed on any of the streets, avenues, alleys, parks or any vacant property within the city any paper

handbills, circulars, dodgers or other advertising matter. [Ord. No. 354, § 4 (1957).]

Sec. 3-5. Same—Placing or throwing in automobiles.

It shall be unlawful for any person to distribute in the city any handbill or other similar form of advertising by throwing or placing the same in any automobile or other vehicle within the city. [Ord. No. 354, § 5 (1957).]

Sec. 14-53. Public meetings; permit required.

It shall be unlawful for any person or persons to hold a public meeting in the city or its police jurisdiction without first having obtained a permit from the mayor, to do so. [Ord. No. 184, § 4, 11-9-32.]

Questions Presented

1. Whether Sections 3-4 and 3-5 of the General City Code of Fairfield, Alabama, upon which appellants' contempt convictions rest, on their face or as construed and applied in this case, abridge appellants' rights of free speech, press and assembly in violation of the due process clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

2. Whether Section 14-53 of the General City Code of Fairfield, Alabama, upon which appellants' contempt convictions rest, on its face or as construed and applied in this case, abridges appellants' rights of free speech, press and assembly in violation of the due process clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

3. Whether consideration by the Supreme Court of the United States of a challenge on federal grounds to the validity of a municipal ordinance on its face, or as construed and applied, may be precluded where appellants are found in contempt of an *ex parte* temporary injunction which

purports to enforce compliance with the ordinance, and the state court refuses to entertain the merits of the challenge on the procedural ground that appellants "chose to disregard the temporary injunction rather than contesting it by orderly and proper procedure," where the consequence of the state procedural rule is to nullify appellants' rights of free speech, press and assembly in violation of the due process clause of the Fourteenth Amendment and the First Amendment to the United States Constitution.

4. Whether appellants' convictions for contempt, being unsupported by any evidence of guilt, constitute wholly arbitrary official action and thereby violate the due process clause of the Fourteenth Amendment to the United States Constitution.

Statement of the Case

I. When and How the Federal Questions Were Raised.

The federal questions presented by this appeal were first raised by appellants in the Circuit Court on their oral motion to dismiss (R. 66-69). They were raised thereafter in appellants' petition for certiorari to the Supreme Court of Alabama (R. 84-86), and on the application for rehearing (R. 103).

II. The Facts.

Appellant Fields is Information Director of the National States Rights Party. Appellant Lyons is Youth Organizer of the Party (R. 57). The Party, which stands for white supremacy and segregation (R. 53), has been on the ballot in Alabama (R. 58).

Sometime prior to Wednesday, October 11, 1961 (R. 44), the Party had handbills distributed in Fairfield which contained the following announcement (R. 42):

WHITE WORKERS
MEETING

*NIGGERS ARE TAKING OVER UNIONS!

*NIGGERS WANT OUR PARKS AND POOLS!

*NIGGERS DEMAND MIXED SCHOOLS!

Communists in NAACP and in Washington say
Whites HAVE NO RIGHTS!
The Nigger gets everything he DEMANDS!

White Supremacy CAN be saved
Whites CAN STOP this second Reconstruction!

Hear Important Speakers From 4 States

Time—8 P. M. Date—Wed. Oct. 11

Place—5329 Valley Road

In Downtown Fairfield, Alabama

ABOVE THE CAR WASH

THUNDERBOLT Mobile Unit Will be Parked Out
Front Sponsored by National States Rights Party

Box 783, Birmingham, Alabama

PUBLIC INVITED

Come and Bring Your Friends

At about 5:00 P. M., Tuesday, October 10, 1961, the day before the scheduled meeting, the Mayor of Fairfield sent a notice to appellant Fields that he had violated a city ordinance that prohibited the distribution of handbills. The Mayor also informed Fields that another ordinance forbade public meetings without a permit (R. 43).

At about 6:00 P. M. the same evening, Fields phoned the Mayor at his home to discuss the issuance of a permit for the meeting (R. 36-38). Fields called the Mayor's office the morning of the following day and made an appointment for 2:00 P. M. that afternoon for further discussion (R. 55). Around noon of that day, however, Fields was served with an injunction (R. 24) forbidding him, the National States

Rights Party, their servants, agents and employees, from holding the scheduled meeting and from distributing any handbills announcing the meeting. Fields did not keep his 2:00 P. M. appointment.

The injunction was issued on the *ex parte* application of the City of Fairfield. The Bill of Complaint (R. 2-4) alleged, among other things, that the appellants were "distributing handbills of an inflammatory nature designed to create ill will and disturbances between the races in the City of Fairfield," that the purpose of the announced meeting "is to create ill will, disturbances and disorderly conduct between the races," and that the meeting "will constitute a public nuisance, injurious to the health, comfort, or welfare of the City of Fairfield and * * * is calculated to create a disturbance, incite to riot, disturb the peace, and disrupt peace and good order in the City of Fairfield."

About 7:30 P. M. on the evening of the scheduled meeting, appellants Fields and Lyons arrived at the meeting place to announce that the meeting site had been transferred to the city park at Lipscomb, a nearby town (R. 16, 22, 25, 27, 49, 54, 60, 62, 63).[1] Subsequent to the service of the injunction, no meeting was held in Fairfield (R. 48, 55), no handbills were distributed (R. 18, 22, 26, 31, 44, 47, 54, 63, 72),[2] nor was there any disturbance whatsoever (R. 17, 25, 28, 55).

Appellants were arrested for violating the injunction. On the following day, October 12, 1961, after a hearing, each was found in contempt and sentenced to serve 5 days in jail and pay a $50 fine.

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[1] Earlier the same day, appellant Lyons and another person were prohibited by the police from entering the meeting place (R. 33, 50).

[2] Some copies of the Party's newspaper, *Thunderbolt*, were distributed near the original meeting place, but it contained no notice of the Fairfield meeting, nor had its distribution been enjoined. A copy of the newspaper is contained at R. 19.

III. The Disposition Below of the Federal Questions.

The Circuit Court, although it found that "the ordinances are a legal exercise of the police power of the municipality" (R. 72), also found that "I don't believe it is the law of this State that you can collaterally attack the constitutionality of an ordinance in a contempt proceeding * * *" (R. 71).

The Supreme Court of Alabama also found the ordinances not unconstitutional (R. 100), but held that appellants "may not raise the question of its unconstitutionality in collateral proceedings on appeal from a judgment of conviction for contempt of the order or decree * * *" (R. 100).

The Questions Are Substantial

1. Sections 3-4 and 3-5 of the Code of Fairfield purport to prohibit the distribution of "any paper handbills, circulars, dodgers or other advertising matter," at all times and in all public places. A statute of that magnitude is unconstitutional on its face, for it abridges the rights of free speech and free press that are secured by the First and Fourteenth Amendments to the United States Constitution. *Lovell* v. *Griffin*, 303 U. S. 444; *Hague* v. *CIO*, 307 U. S. 496; *Schneider* v. *State*, 308 U. S. 147; *Jamison* v. *Texas*, 318 U. S. 413; *Talley* v. *California*, 362 U. S. 60.

Sections 3-4 and 3-5 are almost identical to the ordinances involved in Numbers 13, 18 and 29 in *Schneider*, which, as the Court said, "absolutely prohibit [distribution] in the streets and, one of them, in other public places as well." 308 U. S. at 162. The Court held those ordinances invalid on their face on the ground that they abridged "the free communication of information and opinion secured by the Constitution." *Id.* at 163.

This case is aggravated by the fact that appellants were restrained in advance from distributing any handbills what-

ever. Thus, appellee, relying upon Sections 3-4 and 3-5, burdened appellants with a prior restraint, a particularly noisome violation of the First Amendment, *Near* v. *Minnesota*, 283 U. S. 697; *Burstyn* v. *Wilson*, 343 U. S. 495.

Moreover, the trial court explicitly found that no handbills were distributed after the injunction was served (R. 72). What the court in fact found, was that appellants had distributed copies of their newspaper, *The Thunderbolt*, whose circulation had not been enjoined. Though the court acknowledged that there was no announcement of the meeting in the issue distributed,[3] it said, "That was an artifice on the part of someone to bring home the fact that the meeting was going to be held while artfully evading the exact language of the handbill that had been previously distributed"(R. 72). Thus, the high order of protection conferred by the Constitution on the freedom of the press, was arrantly disregarded. *Near* v. *Minnesota, supra; Grosjean* v. *American Press Co.*, 297 U. S. 233; *Bridges* v. *California*, 314 U. S. 252; *Pennekamp* v. *Florida*, 328 U. S. 331; *Craig* v. *Harney*, 331 U. S. 367.

2. Section 14-53 of the Code of Fairfield requires that a permit be obtained from the Mayor "to hold a public meeting in the city or its police jurisdiction." Because the ordinance contains no "narrowly drawn, reasonable and definite standards for the officials to follow * * *," it is invalid on its face. *Niemotko* v. *Maryland*, 340 U. S. 268, 271; *Hague* v. *C. I. O.*, 307 U. S. 496, 516; *Kunz* v. *New York*, 340 U. S. 290. Mr. Justice Frankfurter, concurring

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[3] The issue consists of eight pages. The front page headline says "'Freedom Riders' Burn Bus While Bobby Kennedy Blames 9 Innocent White Alabamians." The centerfold headline said "Kennedys Start Second Reconstruction of South." Two and a half pages are devoted to excerpts from Henry Ford's The International Jew (R. 19).

in *Kunz*, said, "If a municipality conditions holding street meetings on the granting of a permit * * *, the basis which guides licensing officials in granting or denying a permit must not give them a free hand, or a hand effectively free when the actualities of police administration are taken into account." 340 U. S. at 284-285.

The size of the free hand wielded against appellants, when measured by its reach in this case, is remarkable. The power it assumed was not restricted to regulating the "time, place and manner," of a meeting on the streets or in the parks,[4] but rather it asserted the power to suppress in advance a meeting of a political party to be held in a private hall.

There have been two cases before this Court which were concerned with the power asserted by a State to prohibit a peaceful public meeting held in a private hall merely because the purpose of the meeting was disagreeable to the government: *DeJonge* v. *Oregon*, 299 U. S. 353; and *Thomas* v. *Collins*, 323 U. S. 516.[5]

In *DeJonge*, an Oregon statute purported to make criminal, among other things, "the organization of an * * * assemblage which advocates [criminal syndicalism], and presiding at or assisting in conducting a meeting of such an organization, society or group." DeJonge's "sole offense as charged * * * was that he had assisted in the conduct of a public meeting, albeit otherwise lawful, which was held under the auspices of the Communist Party." 299 U. S. at 362.

The Court, holding the conviction repugnant to the due process clause of the Fourteenth Amendment, said:

> "The holding of meetings for peaceable political action cannot be proscribed. Those who assist in

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[4] Compare *Cox* v. *New Hampshire*, 312 U. S. 569, 576.

[5] Compare *Local 309* v. *Gates*, 75 F. Supp. 620.

> the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is to be held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge." 299 U. S. at 365.

In *Thomas*, an official of a labor union was held in contempt of a restraining order—issued *ex parte*, as here—that forbade him from violating a Texas statute regulating the solicitation of membership in trade unions. The order was issued in anticipation of a meeting at which the appellant was scheduled to speak. He appeared and spoke at the meeting, and was held in contempt. The Court, holding that the statute contravened the First Amendment, said that "a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment," 323 U. S. at 540.

Whether or not a State has the power to prohibit in advance peaceful assemblies merely because its officials prefer to suppress discussion of issues of public importance or maintain the *status quo*, is a constitutional question of the first magnitude. It is presented here in graphic form.

The purpose of the meeting organized by appellants was to discuss race relations. Appellants maintain that the white race is superior to the Negro race and are entirely opposed to any form of racial integration. They intended

to discuss—and oppose—the integration of labor unions, parks, pools and schools. Their opposition to integration, of course, is constitutionally irrelevant. Compare *Terminiello* v. *Chicago*, 337 U. S. 1, and *Rockwell* v. *Morris*, 10 N. Y. 2d 721, cert. denied, 368 U. S. 913, with *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449 and *Bates* v. *Little Rock*, 361 U. S. 516.

The power of a State to suppress speech and assembly may not be applied in advance, but only, if at all, when there is a clear and present danger that the speech or assembly threatens to incite illegal conduct. *Schenk* v. *United States*, 249 U. S. 47, *Gitlow* v. *New York*, 268 U. S. 652 (dissent), *DeJonge* v. *Oregon*, *supra*, *Bridges* v. *California*, 314 U. S. 252, *Thomas* v. *Collins*, *supra*. Compare *Yates* v. *United States*, 354 U. S. 298. The record here is barren of evidence of any such danger. Appellee's bill of complaint contains no factual allegations to support its conclusions that the purpose of the meeting was "to create ill will, disturbances, and disorderly conduct between the race," and that it "will constitute a public nuisance, injurious to the health, comfort or welfare of the City of Fairfield and * * * is calculated to create a disturbance, incite to riot, disturb the peace, and disrupt peace and good order in the City of Fairfield" (R. 3).[6]

The true purpose of the restraints imposed on appellants was revealed by the sentencing court. It said, "Back several years ago we did have a movement to move into one of our public parks here but that was straightened out within a matter of a few weeks * * *. And it is the intention, I know, of the public officials * * * that we are going to do everything we can to maintain that status quo" (R. 72). But a State "may not suppress free communication of views * * * under the guise of preserving desirable conditions." *Cantwell* v. *Connecticut*, 310 U. S. 296, 308.

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[6] The record shows that a meeting held by appellants the previous evening was entirely peaceable (R. 47).

The ruling below, if permitted to stand, will empower the States to burden free speech, press and assembly to an extent not heretofore tolerated by this Court. The decision whether those burdens offend the First Amendment, requires full briefing and oral argument before the Court.

3. Whether or not a state rule of procedure may be interposed between an individual and his rights of free speech, press and assembly under the circumstances present in this case, is a substantial federal question that has not been decided by this Court.

The Alabama Supreme Court held that appellants could test neither the constitutionality of the ordinances on which the temporary injunction was based, nor the validity of the injunction itself, by violating its terms. It relied principally [7] on *United States* v. *United Mine Workers*, 330 U. S. 258, which involved the question whether the Norris-LaGuardia Act prohibited a United States District Court from enjoining a coal miners' strike when the United States was in possession of the mines. Although *United Mine Workers* affirmed convictions of contempt of an *ex parte* restraining order, the case is not authority for the proposition that a contempt conviction is valid even if the underlying order is void on constitutional grounds.

First, of the five Justices in the majority, three held the order valid. Though they went on to declare that even if the order were void, the defendants nonetheless were required to obey it, that much of their opinion was unnecessary to their decision and therefore not binding. Mr. Justice Black and Mr. Justice Douglas likewise found the order valid and thought it unnecessary, therefore, to decide the academic problem of a void order. They dissented in part on other grounds. Mr. Justice Murphy and Mr. Justice Rutledge concluded both that the order was void and the

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[7] The opinion also cites *Ex Parte National Association for Advancement of Colored People*, 265 Ala. 349, 91 So. 2d 214, but neglects to note that that case was reversed, in *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449.

contempt conviction therefore invalid. Only Mr. Justice Frankfurter and Mr. Justice Jackson held the contempt conviction valid even though the order on which it was based was, in their opinion, invalid. Thus, of nine Justices writing five opinions, only Justices Frankfurter and Jackson squarely adopted the proposition advanced here by the Supreme Court of Alabama.

Second, the issue in *United Mine Workers* dealt only with the question whether the Norris-LaGuardia Act was to be interpreted to prohibit a United States District Court from enjoining a strike under the unique facts of that case. There was no discussion in the Court's opinion bearing on the Act's constitutionality, nor was there any claim that the Act was unconstitutional.

Third, there was substantial doubt whether the Norris-LaGuardia Act applied to the facts in *United Mine Workers*, for as the Court noted, the question "had not previously received judicial consideration." 330 U. S. at 293. In the case at bar, to the contrary, it is perfectly clear that the ordinances in question are unconstitutional both on their face and as construed and applied. See Points 1 and 2, *supra*. Consequently, the "different result" which Mr. Chief Justice Vinson anticipated, "were the question of jurisdiction frivolous and not substantial", 330 U. S. at 293, is required in this case.

Fourth, the nature of the *United Mine Workers* case, dealing as it does with a labor dispute, sets it apart from the instant case which comes here unfettered by the qualifications that may attach to cases that concern industrial conflict. Compare, *Carpenters and Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722; *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490; *Building Service Employees* v. *Gazzam*, 339 U. S. 532; *Hughes* v. *Superior Court*, 339 U. S. 460; *Local Union No. 10* v. *Graham*, 345 U. S. 192.

Fifth, cases decided by this Court both before and after *United Mine Workers* have held that a contempt conviction under a void order is itself void. *Ex Parte Rowland*, 104

U. S. 604; *Ex Parte Fisk*, 113 U. S. 713; *Re Ayers*, 123 U. S. 443; *Re Sawyer*, 124 U. S. 200. See also *United Gas, Coke & Chemical Workers* v. *Wisconsin Employment Relations Board*, 340 U. S. 383; *In the Matter of Green*, 369 U. S. 689.

By utilizing the supposed doctrine of *United Mine Workers*, Alabama has effectively curtailed appellants' rights of speech, press and assembly, and Mr. Justice Rutledge's prophecy in his dissent in *United Mine Workers* has come to pass:

> "[I]f [the Court's holding] should become the law, for every case raising a question not frivolous concerning the court's jurisdiction to enter an order or judgment, that punishment for contempt may be imposed irrevocably simply upon a showing of violation, the consequences would be equally or more serious * * *.
>
> The First Amendment liberties especially would be vulnerable to nullification by such control. Thus, the constitutional rights of free speech and free assembly could be brought to nought and censorship established widely over these areas merely by applying such a rule to every case presenting a substantial question concerning the exercise of those rights. * * * These and other constitutional rights would be nullified by the force of invalid orders issued in flat violation of the constitutional provisions securing them, and void for that reason." 330 U. S. at 351-352.

If appellants were not judged in contempt of the preliminary injunction, but rather were convicted directly of violating the ordinances on which the injunction was based, there is no question that the ordinances' constitutionality could have been tested by violating them. *Staub* v. *Baxley*, 355 U. S. 313. But Alabama, by interposing a temporary injunction between appellants and the ordinances, has devised a method that, if ratified by this Court, will allow circumvention of the *Staub* doctrine and confer on the states a technique to nullify the precise purpose the First Amendment is intended to serve—full discussion of all matters of

public concern, which Mr. Justice Brandeis called "a political duty." *Whitney* v. *California*, 274 U. S. 357, 376 (concurring opinion). Public issues frequently are short run, and if the government were empowered to suppress discussion by use of an injunction issued, as here on the flimsiest ground,[8] the purpose of the discussion may well have passed by the time the appellate remedies were exhausted. For example, it would enable a political candidate to be enjoined from speaking during the campaign period preceding an election. If he violated the injunction he would be imprisoned; if he bowed to the injunction and tested its constitutionality in "orderly and proper proceedings," the election will have long ended. In either case, the electorate would not have heard him and the electoral process would be crippled.[9]

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[8] So flimsy "as to be usurping judicial forms", thereby satisfying Mr. Justice Frankfurter's criterion for treating the injunction "as though it were a letter to a newspaper." *United Mine Workers*, *supra* at 309-310.

[9] On the day this Jurisdictional Statement was printed, the New York Times carried the following story (October 30, 1962, p. 22):

> Los Angeles, Oct. 29—California Democrats won a court order today against the sale and distribution of the controversial Little Red Book until after the election.
>
> Democrats alleged that the booklet, "California: Dynasty of Communism," implied that Gov. Edmund G. Brown and other Democratic incumbents were soft on Communism.
>
> Superior Judge Kenneth N. Chantry issued a temporary restraining order prohibiting the printing, posting or distribution of the 32-page booklet. He set Nov. 7, the day after Election Day, for a hearing on an injunction.
>
> The order followed a libel suit for $500,000 damages brought by Eugene L. Wyman, the state chairman, and other Democratic leaders.
>
> They alleged the booklet was designed to "injure, defame, discredit and defeat" Democratic officials.
>
> It was contended the booklet contained false statements and doctored photographs.
>
> * * *
>
> Ordered
>
> Judge Chantry ordered defendants to take back any copies in the hands of postal officials.

Whether or not the Alabama rule of procedure announced by the court below shall be permitted to stand between appellants and their rights under the Constitution, is a substantial federal question that should be fully briefed and argued before the Court.

4. This Court has held that convictions devoid of evidentiary support are unconstitutional under the due process clause of the Fourteenth Amendment. *Thompson* v. *City of Louisville*, 362 U. S. 199; *Garner* v. *State of Louisiana*, 368 U. S. 157. This is such a case.

The Circuit Court expressly found that "there is no evidence that the pamphlet was re-distributed" (R. 72), but as we pointed out above, he held that the injunction was violated by the distribution of appellants' newspaper even though it contained no notice of the meeting. The Circuit Judge said nothing at all about whether the evidence sustained a finding that appellants had violated the ban on the scheduled meeting—nor could he, for it is undisputed that appellants had cancelled it. Although appellants were in the vicinity of the meeting hall, it was only to notify those persons who may have come to the announced meeting place, that the meeting was to be held elsewhere, outside the City of Fairfield. Nonetheless, the Supreme Court of Alabama said that "There is evidence to support the finding that they did violate the terms of the temporary injunction" (R. 100).

CONCLUSION

For the reasons stated, it is urged that jurisdiction be noted.

Respectfully submitted,

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October 31, 1968

[Judgment of the Supreme Court of Alabama]

THE SUPREME COURT OF ALABAMA

Thursday, June 14, 1962

The Court Met Pursuant to Adjournment

Present: All the Justices

Jefferson Circuit Court

Bessemer Division

6th Div. 801: 802: 809

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DR. EDWARD R. FIELDS and National States Rights Party,

vs.

CITY OF FAIRFIELD, a Municipal Corporation.

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The said causes having been consolidated, WHEREUPON,

Come the parties by attorneys and the record and matters therein assigned for errors, being argued and submitted on motions and merits and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED that the judgment of the Circuit Court be in all things affirmed.

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that the Appellants-Petitioners, Edward R. Fields and Robert Elsworth Lyons, and Dr. Fred Short and Pearce S. Johnson, sureties on the appeal bond, pay the costs of appeal of this Court and of the Circuit Court.

And it appearing that said parties have waived their rights of exemption under the laws of Alabama, it was ordered that execution issue accordingly.

[Opinion of the Supreme Court of Alabama]

DR. EDWARD R. FIELDS and National States Rights Party,

v.

CITY OF FAIRFIELD, a Municipal Corporation.

APPEAL FROM JEFFERSON CIRCUIT COURT

MERRIL, *Justice*:

Dr. Edward R. Fields and Robert Lyons were adjudged to be in contempt of circuit court because they had been found guilty of violating a temporary injunction issued by the court against them as individuals, and against the National States Rights Party, of which they were officers, enjoining them from conducting an advertised meeting in Fairfield. Fields and Lyons were each fined $50 and sentenced to five days in jail.

Petitioners "appealed" their judgment of conviction to this court and later their attorney "discovered that writ of certiorari is the proper remedy in this case," and asked that the purported appeal be considered as a petition for writ of certiorari. We have complied with the request and so treat the cause now under review.

Petitioners were distributing handbills in the City of Fairfield, which read:

Opinion of Supreme Court of Alabama

"WHITE WORKERS

"MEETING

"'NIGGERS ARE TAKING OVER UNIONS!

"'NIGGERS WANT OUR PARKS AND POOLS!

"'NIGGERS DEMAND MIXED SCHOOLS!

"Communists in NAACP and in Washington say "Whites HAVE NO RIGHTS!

"The Nigger gets everything he DEMANDS!

"White Supremacy CAN be saved!

Whites CAN STOP this second Reconstruction!

"Hear Important Speakers from 4 States

"Time—8 P. M. Date—Wed. Oct. 11

"Place—5329 Valley Road

"In Downtown Fairfield, Alabama

"ABOVE THE CAR WASH

"THUNDERBOLT Mobile Unit Will Be Parked Out Front Sponsored by National States Rights Party

"Box 783, Birmingham, Alabama

"PUBLIC INVITED

"Come and Bring Your Friends!"

The attorney for the city sought a temporary injunction to enjoin petitioners from holding the advertised meeting because they had not complied with an ordinance of the City Code which provided "It shall be unlawful for any person or persons to hold a public meeting in the city or police jurisdiction without first having obtained a permit from the mayor to do so." The judge issued

the temporary injunction and a copy was served on Fields at Noon, Wednesday, August 11th. Lyons also had notice of the temporary injunction which enjoined them "from holding a public meeting at 8 P.M. on Wednesday, October 11, 1961, at 5329 Valley Road, Fairfield, Alabama, as announced, and from distributing further in the City of Fairfield, handbills announcing such meeting such as were distributed in the City of Fairfield, Alabama, on October 10, 1961, until further orders from this Court; and this you will in no wise omit under penalty, etc."

Fields and Lyons were arrested that night where a crowd had gathered across the street from the advertised place of meeting. Fields was making announcements to the crowd and both he and Lyons were distributing copies of "The Tunderbolt," the newspaper of the Party.

The petitioners make two points in brief. They say first that the evidence shows they did not violate the terms of the injunction. There is evidence to support the finding that they did violate the terms of the temporary injunction, and we have held that upon petition for certiorari, the court does not review questions of fact but only questions of law; but if the court below misapplies the law to the facts as found by it or there is no evidence to support the finding, a question of law is presented to be reviewed upon the petition for certiorari. *Ex parte Wetzel*, 243 Ala. 130, 8 So. 2d 824.

We now come to the main point argued by petitioners—"that the temporary injunction was void ab initio on account of being contrary to and in violation of both the United States and Alabama Constitutions." This argument is based upon the premise that the ordinance of the City of Fairfield is unconstitutional. We cannot say that it is unconstitutional on its face.

In *Ex parte National Ass'n for Adv. of Colored People*, 265 Ala. 349, 91 So. 2d 214, we said:

> "On the petition for certiorari the sole and only reviewable order or decree is that which adjudges the petitioner to be in contempt. Certiorari cannot be made a substitute for an appeal or other method of review. Certiorari lies to review an order or judgment of contempt for the reason that there is no other method of review in such a case. Ex parte Dickens, 162 Ala. 272, 50 So. 218, 220. Review on certiorari is limited to those questions of law which go to the validity of the order or judgment of contempt, among which are the jurisdiction of the court, its authority to make the decree or order, violation of which resulted in the judgment of contempt. It is only where the court lacked jurisdiction of the proceeding, or where on the face of it the order disobeyed was void, or where procedural requirements with respect to citation for contempt and the like were not observed, or where the fact of contempt is not sustained, that the order or judgment will be quashed."

Here, the circuit court had jurisdiction of the parties and the subject matter. It had the authority to make the decree or order, and on its face, the order disobeyed was not void. It is not contended that any procedural requirements were omitted.

In the face of this, petitioners, without moving to dissolve the temporary injunction, seeking a hearing, or in any way contesting the writ, proceeded to meet a crowd gathered across the street from the advertised place of meeting and distributed inflammatory literature.

As a general rule, an unconstitutional statute is an absolute nullity and may not form the basis of any legal right or legal proceedings, yet until its unconstitutionality has been judicially declared in appropriate proceedings, no per-

son charged with its observance under an order or decree may disregard or violate the order or the decree with immunity from a charge of contempt of court; and he may not raise the question of its unconstitutionality in collateral proceedings on appeal from a judgment of conviction for contempt of the order or decree, or an application for habeas corpus for release from imprisonment for contempt. *United States* v. *United Mine Workers of America*, 380 U. S. 258, 91 L. Ed. 884, 67 S. Ct. 677; *Howat* v. *Kansas*, 258 U. S. 181, 66 L. Ed. 550, 42 S. Ct. 277; *People* v. *Bouchard*, 6 Misc. 459, 27 N. Y. S. 201; *McLeod* v. *Majors*, 5th Cir., 102 F. 2d 128; *Pure Milk Asso.* v. *Wagner*, 363 Ill. 316, 2 N. E. 2d 288.

In the *United Mine Workers* case, supra, the court said:

> "Proceeding further, we find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings. This is true without regard even for the constitutionality of the Act under which the order is issued. In *Howat* v. *Kansas*, 258 U. S. 181, 189-190 (1922) this Court said:
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> > 'An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed

for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.'

"Violations of an order are punishable as criminal contempt even though the order is set aside on appeal, *Worden* v. *Searle*, 121 U. S. 14 (1887), or though the basic action has become moot, *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418 (1911).

"We insist upon the same duty of obedience where, as here, the subject matter of the suit, as well as the parties, was properly before the court; where the elements of federal jurisdiction were clearly shown; and where the authority of the court of first instance to issue an order ancillary to the main suit depended upon a statute, the scope and applicability of which were subject to substantial doubt. * * * "

Under these authorities, petitioners were guilty of contempt, as they chose to disregard the temporary injunction rather than contesting it by orderly and proper proceedings.

Affirmed.

Livingston, C. J., Simpson and Harwood, JJ., concur.

[Opinion of the Circuit Court of Jefferson County]

The Court: Well, gentlemen, before I give you my decision, I have a remark or two I would like to make.

First, I don't believe it is the law of this State that you can collaterally attack the constitutionality of an ordinance in a contempt proceeding without first purging yourself of that contempt, if there is any there.

And, second, it has been, either through good luck or the grace of somebody bigger than all of us here in the Bessemer Cut-off, that we have been singularly blessed with not having any race incident here in this area; and, particularly, I think Fairfield has never had one. Back several years ago we did have a movement to move into one of our public parks here but that was straightened out within a matter of a few weeks by the City Attorney for Bessemer and other people. And since that time I don't believe we have had a single clash between the races, either in Bessemer, or Fairfield, or any of the other city—cities of the Bessemer Division of this County. And it is the intention, I know, of the public officials, both of this county and of the various municipalities of the Bessemer Division of this County that we are going to do everything we can to maintain that status quo. We are going to try to keep peace between the races here and we are going to do everything that we can to keep people from agitating trouble.

Getting down to this case here:

While there is no evidence that the pamphlet was redistributed, the writ of injunction says "distribute further handbills, announcing such meetings, as were distributed in the City of Fairfield."

I am impressed by the tone and the context of the paper that was admittedly distributed and I simply think that was an artifice on the part of someone to bring home the fact that the meeting was going to be held while artfully

evading the exact language of the handbill that had been previously distributed.

If these respondents were of the opinion and so advised that these ordinances were unconstitutional they could have filed their motion to dissolve it and had their day in court and the final hearing on this injunction was to have been set down or was set down on November 17th, giving everybody adequate time to prepare their cases to come in and test the constitutionality of these ordinances.

It is my opinion that the ordinances are a legal exercise of the police power of the municipality.

Therefore, Dr. Fields and Mr. Lyons, if you will stand:

It is the judgment of the Court that you are in contempt of this Court and it is the judgment of the Court that you be and are hereby adjudged in contempt and you are fined $50.00.

And as additional punishment you are ordered to be confined in the county jail for five days.